

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MEGA VAPE, LLC

Plaintiff,

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§

§

v.

5:20-CV-00454

THE CITY OF SAN ANTONIO

Defendant.

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DEFENDANT AMENDED NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT COURT:

NOW COMES Defendants, **THE CITY OF SAN ANTONIO** (hereinafter “Defendant”), in the above-styled and numbered cause, and pursuant to 28 U.S.C. Sections 1331 and 1441(a) file this Notice of Removal, and in support thereof would respectfully show unto the Court as follows:

1. On April 9, 2020, Plaintiff Mega Vape, LLC filed a Sworn / Verified Original Petition, and Application for a Temporary Restraining Order in the 438th Judicial District Court, Bexar County, Texas, Cause No. 2020-CI-06894. The Defendants were not provided service of that Petition and Plaintiff set this case for hearing on his Application for Temporary Injunction on April 13, 2020 in the Presiding District Court. Plaintiff’s Original Petition, alleged Defendant claims against the Defendants, including Defendants violated Plaintiff’s state and federal statutory and constitutional rights. Plaintiff alleges that the suit is brought pursuant to 42 U.S.C. §1983 (Complaint, Para. 6) and asserts a claim of violations of constitutional due process rights. (Complaint, Paras. 24, 51 and 57)

2. Pursuant to 28 U.S.C. §1331, the Federal District Courts have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. Pursuant to 28 U.S.C. §1441(a), Plaintiff’s claims may therefore be removed to Federal District Court.

3. Pursuant to 28 U.S.C. §1446(a), attached to this Notice of Removal are copies of all process and pleadings, orders and other filings in the state court action as of April 10, 2020. (*See* Exhibit "A".) Venue is proper in this district under 28 U.S.C. §1446(a), because Bexar County, Texas, where the removed action is pending, is within the San Antonio Division of the United States District Court for the Western District of Texas.

4. To the extent Plaintiff is asserting any state law causes of action, the City would show that the United States District Court has jurisdiction over Plaintiff's independent state law claims pursuant to the Court's supplemental jurisdiction, because those claims arise out of and are derived from a common nucleus of operative facts which form the basis of Plaintiffs' federal civil claims.

5. The Notice of Removal is being filed within thirty (30) days of receipt of notice of Plaintiff's claims on April 10, 2020 as required by 28 U.S.C. §1446(b).

6. Pursuant to 28 U.S.C. §1446(d), the City intends to serve written notice of this removal upon all interested parties and upon the 438th District Court, Bexar County, Texas, promptly after filing this Notice of Removal.

WHEREFORE, PREMISES CONSIDERED, the City hereby effectuates a removal of the present cause of action to this Honorable United States District Court.

Respectfully submitted,

CITY OF SAN ANTONIO
Office of the City Attorney
Litigation Division
100 W. Houston St., 18th Floor
San Antonio, Texas 78205

/s/Deborah Lynne Klein

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following on April 12, 2020:

Gerrit Schulze
310 South St. Mary's Street, Suite 2100
San Antonio, Texas 78205
210-503-2800 phone
210-503-2888 fax

CM/ECF

Warren v. Norred
515 East Border Street
Arlington, Texas 76010
817-704-3975 phone
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CM/ECF

/s/Deborah Lynne Klein
DEBORAH LYNNE KLEIN